SJC-13123

COMMONWEALTH vs. LEON G. DUFRESNE.

Middlesex. October 6, 2021. - February 24, 2022.

Present: Budd, C.J., Gaziano, Lowy, Cypher, Kafker, Wendlandt, & Georges, JJ.

Abuse Prevention. Protective Order. Constitutional Law, Separation of powers, Assistance of counsel. Due Process of Law, Assistance of counsel. Practice, Civil, Assistance of counsel. Practice, Criminal, Mistrial. Evidence, Prior misconduct, Cross-examination.

Complaint received and sworn to in the Lowell Division of the District Court Department on September 27, 2017.

The case was tried before John F. Coffey, J.

The Supreme Judicial Court on its own initiative transferred the case from the Appeals Court.

Jennifer H. O'Brien for the defendant.

Konstantin Tretyakov, Assistant District Attorney (Jamie M. Charles, Assistant District Attorney, also present) for the Commonwealth.

Patrick R. Kessock, of New York, for National Coalition for a Civil Right to Counsel, was present but did not argue.

The following submitted briefs for amici curiae:

Anthony D. Gulluni, District Attorney, & Travis H. Lynch, Assistant District Attorney, for district attorney for the Hampden District.

David Rassoul Rangaviz, Committee for Public Counsel Services, for Committee for Public Counsel Services.
Kate Barry, Laura Gal, Andrea C. Kramer, Christina Paradiso, Cheryl Garrity, Nicole R.G. Paquin, & Adrianne Ramos for Women's Bar Association of Massachusetts.
Deborah J. Manus for Boston Bar Association.
Jamie Sabino for Massachusetts Law Reform Institute.

LOWY, J. Following a jury trial in the District Court, the defendant, Leon G. Dufresne, was convicted of violating an abuse prevention order. On appeal, he argues that his conviction suffers from two constitutional infirmities, both of which allegedly arise from the criminal penalties imposed on him as a result of his violation of the order. That is, while the defendant does not attack the validity of the underlying order, he challenges the consequences he faces for violating it. First, the defendant contends that G. L. c. 209A, § 7, the statute under which he was convicted, violates the constitutionally mandated separation of powers because it vests the executive branch with the power to enforce judicially issued abuse prevention orders. Second, the defendant argues that the State and Federal Constitutions prohibit his criminal punishment for the violation of an abuse prevention order that was issued when he was uncounselled and afforded no right to court-appointed counsel. In the alternative, the defendant argues that his conviction should be set aside and a new trial ordered

because of abuses of discretion in several of the trial judge's rulings.

We conclude that G. L. c. 209A, § 7, is constitutional under our separation of powers principles, and that neither the State nor Federal Constitution is violated where, as here, a constitutionally permissible proceeding -- even one to which the right to counsel does not apply -- provides a predicate for a subsequent incarcerable offense. Discerning no abuse of discretion in the trial judge's challenged rulings, we affirm the defendant's conviction.[1]

1. Background. We summarize the facts as the jury could have found them. The defendant was involved in a romantic relationship with the victim for nearly four years. During that time, both parties lived in separate rooms within the same rooming house. The relationship had ended by August 24, 2017, when the victim applied for and obtained a protective order under G. L. c. 209A. After notice to the defendant and a hearing on September 6, 2017, at which both the victim and defendant were present, the order was extended for one year. In

[1] We acknowledge the amicus briefs submitted by the district attorney for the Hampden district in support of the Commonwealth, the Committee for Public Counsel Services (CPCS) in support of the defendant, as well as those from the National Coalition for a Civil Right to Counsel (NCCRC) and the Women's Bar Association of Massachusetts (WBA), and the amicus letters submitted by the Boston Bar Association and the Massachusetts Law Reform Institute.

addition to prohibiting the defendant from contacting or abusing the victim, the order required the defendant to vacate and stay away from the rooming house where the defendant had lived and where the victim continued to live.

On September 25, 2017, another resident of the rooming house was standing outside the house smoking a cigarette when the defendant approached. The defendant and the resident talked for approximately two minutes before the defendant asked to enter the house so that he could purchase cigarettes from the resident. The resident refused, pointing out that the victim had an abuse prevention order against the defendant, and the defendant left the area. The resident relayed this interaction to the victim, who reported the incident to police.

The defendant was arrested and charged with violating an abuse prevention order under G. L. c. 209A, § 7. The defendant moved to dismiss the criminal complaint, arguing that his conviction under G. L. c. 209A, § 7, violated the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, and cognate provisions of the Massachusetts Declaration of Rights. A District Court judge denied the defendant's motion to dismiss, and, following a jury trial, the defendant was found guilty and sentenced to eighteen months of probation. The defendant appealed, and we transferred the matter to this court on our own motion.

2. Discussion. a. Abuse Prevention Act. The Abuse Prevention Act was enacted as G. L. c. 209A over forty years ago to address the problem of domestic violence in the Commonwealth. C.O. v. M.M., 442 Mass. 648, 651 (2004). To this end, c. 209A "provides a statutory mechanism by which victims of family or household abuse can enlist the aid of the State to prevent further abuse through [civil] orders prohibiting a defendant from abusing or contacting the victim" (citation and quotations omitted).[2] MacDonald v. Caruso, 467 Mass. 382, 385 (2014). See G. L. c. 209A, § 3A. These civil orders commonly are known as "abuse prevention orders." Abuse prevention orders can be obtained pursuant to G. L. c. 209A, §§ 3-5, in the Superior Court, the Boston Municipal Court, the District Court, or the Probate and Family Court. G. L. c. 209A, § 2. They can also be obtained in the Probate and Family Court as part of divorce proceedings pursuant to G. L. c. 208, § 18, 34B, or 34C; as part of adjudication between spouses pursuant to G. L. c. 209, § 32;

[2] General Laws c. 209A, § 1, defines broadly the type of relationship between a victim and a perpetrator that could give rise to "family or household abuse." Specifically, such abuse may be between individuals who "(a) are or were married to one another; (b) are or were residing together in the same household; (c) are or were related by blood or marriage; (d) hav[e] a child in common . . . ; or (e) are or have been in a substantive dating or engagement relationship." Id. The Superior Court does not have jurisdiction over matters where the relationship between defendant and victim is one of substantive dating or engagement. Id.

and as part of paternity actions pursuant to G. L. c. 209C, § 15 or 20. Chapter 209A additionally provides for enforcement of protection orders issued by another jurisdiction. See G. L. c. 209A, §§ 5A, 7 (providing filing and enforcement mechanisms for orders from other jurisdictions). See also Guidelines for Judicial Practice: Abuse Prevention Proceedings, § 1:00, at 20 (rev. Oct. 2021) (Judicial Guidelines).

In addition to prohibiting a defendant from abusing or contacting the plaintiff (i.e., the victim), an abuse prevention order may, inter alia, (1) require the defendant to vacate and remain away from the plaintiff's household or workplace; (2) award temporary support to the plaintiff and his or her children; (3) award compensation for any financial losses caused by the abuse; (4) order the defendant to surrender any firearms, licenses to carry, and firearm identification cards in his or her possession, (5) award the plaintiff temporary custody of any minor children shared by the plaintiff and defendant; or (6) order the defendant to stay away from the plaintiff's children. G. L. c. 209A, §§ 3, 3B.

Where an abuse prevention order issued in another court restricts a defendant's access to or custody of his or her children, the defendant may file a separate petition in the Probate and Family Court seeking custody or parenting time. See Judicial Guidelines § 12:00, at 239. An order from the Probate

and Family Court will supersede any contradictory provisions in the initial 209A order. See G. L. c. 209A, § 3 ("such order may be superseded by a subsequent custody or support order issued by the probate and family court department, which shall retain final jurisdiction over any custody or support order").

Obtaining and maintaining an abuse prevention order under c. 209A generally involves three separate hearings: an initial ex parte hearing, a notice hearing, and a renewal hearing.[3] See G. L. c. 209A, §§ 3, 4. The three hearings proceed in order:

> "[First, a] temporary abuse prevention order may issue ex parte for up to ten court business days where a plaintiff shows a 'substantial likelihood of immediate danger of abuse.' G. L. c. 209A, § 4. After hearing, the temporary order may be extended for no more than one year if the plaintiff proves, by a preponderance of the evidence, that the defendant has caused or attempted to cause physical harm, committed a sexual assault, or placed the plaintiff in reasonable fear of imminent serious physical harm. G. L. c. 209A, § 3. . . . [Finally, o]n or about the date the initial order expires, the plaintiff may seek to extend the duration of the order 'for any additional time necessary to protect the plaintiff' or to obtain a permanent order. G. L. c. 209A, § 3." (Footnote omitted.)

MacDonald, 467 Mass. at 386. At any point, either party may petition the court to terminate or otherwise modify an existing order. G. L. c. 209A, § 3 ("The court may modify its order at

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[3] Where a judge determines there is not a substantial likelihood of immediate danger of abuse, the judge may not conduct an ex parte hearing; instead, notice must issue so that the defendant can take part in the two-party notice hearing. See G. L. c. 209A, § 4; Judicial Guidelines, §§ 3:00, 3:01 commentary, at 77-78.

any subsequent time upon motion by either party"). Defendants also may challenge an abuse prevention order in the Appeals Court. Zullo v. Goguen, 423 Mass. 679, 681 (1996).

Although the proceedings under G. L. c. 209A, §§ 3 and 4, establishing abuse prevention orders are civil in nature, see G. L. c. 209A, § 3A, violation of an abuse prevention order generally is a criminal offense, see G. L. c. 209A, §§ 3B, 7.[4] To prove such a violation of G. L. c. 209A, § 7, the Commonwealth must demonstrate that "(1) a valid [abuse prevention] order was entered by a judge and was in effect on the date of the alleged violation; (2) the defendant violated the order; and (3) the defendant had knowledge of the order." Commonwealth v. Kulesa, 455 Mass. 447, 452 (2009), quoting Commonwealth v. Silva, 431 Mass. 401, 403 (2000).

b. Constitutional challenges. i. Standard of review. The defendant challenges the statute under which he was convicted both facially and as applied. "We review a challenge to the constitutionality of a statute de novo." Commonwealth v. Feliz, 481 Mass. 689, 696 (2019), S.C., 486 Mass. 510 (2020).

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[4] General Laws c. 209A makes it a criminal offense to violate an order to (1) surrender firearms, (2) vacate or remain away from the household, or (3) refrain from abuse or contact. See G. L. c. 209A, §§ 3B, 7; Commonwealth v. Delaney, 425 Mass. 587, 596 (1997), cert. denied, 522 U.S. 1058 (1998). Violations of any of the other provisions of a c. 209A order are addressed through complaints for civil or criminal contempt. Delaney, supra.

We begin "with a presumption of statutory validity." Fifty-One Hispanic Residents of Chelsea v. School Comm. of Chelsea, 421 Mass. 598, 606 (1996). "The challenging party bears the burden of demonstrating beyond a reasonable doubt that there are no conceivable grounds which could support [the statute's] validity" (citation and quotation omitted). Gillespie v. Northampton, 460 Mass. 148, 152-153 (2011). "Further, we make an independent determination as to the correctness of the judge's application of constitutional principles to the facts as found" (citation and quotation omitted). Commonwealth v. Caldwell, 487 Mass. 370, 374 (2021).

ii. Separation of powers. The defendant contends that G. L. c. 209A, § 7, is facially unconstitutional under art. 30 of the Massachusetts Declaration of Rights. He asserts that, by authorizing the executive branch to prosecute violations of abuse prevention orders, the statute strips the judiciary of its inherent power to enforce judicial orders, thereby violating the constitutionally required separation of powers. We disagree.

Article 30 mandates the separation of powers by prohibiting "interference by one department with the functions of another" (citation omitted). Chief Admin. Justice of the Trial Court v. Labor Relations Comm'n, 404 Mass. 53, 56 (1989). "[T]he executive and legislative branches . . . 'impermissibly interfere with judicial functions when they purport to restrict

or abolish a court's inherent powers, or when they purport to reverse, modify, or contravene a court order.'" K.J. v. Superintendent of Bridgewater State Hosp., 488 Mass. 362, 366 (2021), quoting Gray v. Commissioner of Revenue, 422 Mass. 666, 671 (1996). Nonetheless, the "separation of powers does not require three 'watertight compartments' within the government." K.J., supra, quoting Opinion of the Justices, 372 Mass. 883, 892 (1977). Rather, "[e]ach branch, to some extent, exercises executive, legislative, and judicial powers[, and so t]he critical inquiry here is whether the" actions of the other branches of government "would interfere with the functions" of the judiciary. Opinion of the Justices, 375 Mass. 795, 813 (1978).

We have held that legislative and executive action do not interfere with the function of the judiciary when such action is consistent with a court order. See K.J., 488 Mass. at 368 ("The flexibility inherent in art. 30 allows the legislative and executive branches to take actions consistent with a court order"). Indeed, such actions clearly do not "restrict" or "abolish" the power of the judiciary; rather, such actions give effect to the judiciary's exercise of its own power. In Gray, 422 Mass. at 673-674, for example, we held that it was constitutional for the executive branch to collect court-ordered child support arrearages from a defendant. We reasoned that,

because "the department's seizure of [the defendant's] assets was not in conflict with the [court order] but was entirely consistent with it" (citation and quotation omitted), the executive branch's actions did not interfere with the judicial order. Id. at 675. So too here, because the criminal enforcement of G. L. c. 209A orders is "not in conflict with the [court order]" but, rather, "entirely consistent with it," the requirements of art. 30 are satisfied. See id. Cf. K.J., supra at 371-373 (where statute tasks judiciary with determining placement of civilly committed individuals, executive branch cannot be given "final veto" over that determination).

Finally, we note that "the Legislature has great latitude in defining criminal conduct and in prescribing penalties to vindicate the legitimate interests of society" (citation and quotation omitted), as it did in G. L. c. 209A, §§ 3B and 7, and may choose to criminalize the violation of a civil order. Commonwealth v. Guzman, 446 Mass. 344, 346 (2006). General Laws c. 209A, § 7, poses no separation of powers problems.[5]

iii. Right to counsel. The defendant additionally argues that the State and Federal Constitutions prohibit criminal punishment for violations of a civil order issued via

[5] While G. L. c. 209A, § 3B, is not implicated in the instant case, we note that our reasoning and holding would extend to a facial challenge to that provision on this ground, as well.

proceedings for which defendants are not afforded a right to counsel. Although much of the defendant's brief focuses on the underlying c. 209A civil proceedings and the interests at stake therein, the defendant states that he "is not collaterally attacking the validity of the abuse prevention order against him," nor asking the court to "decide whether counsel must be appointed to all indigent defendants in abuse prevention order matters." The defendant also does not suggest that his criminal trial or conviction was tainted with any constitutional errors. Again, the defendant alleges fundamental constitutional defects not in either the civil or the criminal c. 209A proceedings but rather in the connection between them.[6]

[6] This understanding of the defendant's argument comes after careful analysis of the defendant's brief; the defendant's arguments proved hard to parse on this issue. In addition to the statements quoted supra, the defendant's question presented and headings seem to focus on "[w]hether criminal punishment of a civil order requires that a defendant be represented by counsel when the order issues." However, the defendant also seems to question more broadly the constitutionality of c. 209A and devotes much of his brief to an analysis of the civil c. 209A procedures under Lassiter v. Department of Social Servs., 452 U.S. 18 (1981), as if he were challenging the underlying procedures distinct from the possible imposition of criminal penalties.

Reconciling these lines of argumentation, we think a reasonable interpretation of the defendant's charge to this court is that we must consider the right to counsel in abuse prevention order proceedings, where the defendant is later criminally punished for violating the order.

The defendant grounds his argument, without specificity, in the Fifth, Sixth, and Fourteenth Amendments and in cognate provisions of the Massachusetts Declaration of Rights, contending that some combination of these constitutional provisions required that he be represented by counsel -- and thus that counsel be appointed for him if necessary -- during his civil c. 209A proceedings because he was later criminally punished for violating the resulting order. In other words, the defendant contends that defendants in abuse prevention order proceedings have a constitutional right to counsel if they are later to be prosecuted for violating the resulting order.

The constitutional right to counsel generally originates from one of two sources. First, under the Sixth Amendment to the United States Constitution and art. 12 of the Massachusetts Declaration of Rights, "criminal defendants [enjoy] the right to counsel at all 'critical stages' of the prosecution" (citation omitted). Commonwealth v. Neary-French, 475 Mass. 167, 170 (2016). Second, the right to counsel may apply to civil proceedings under the Fourteenth Amendment or cognate provisions of the Massachusetts Declaration of Rights where necessary to satisfy the requirements of procedural due process. See, e.g., Lassiter v. Department of Social Servs., 452 U.S. 18, 31 (1981) (due process clause of Fourteenth Amendment may, in some cases, require appointment of counsel in proceedings terminating

indigent parent's rights); Department of Pub. Welfare v. J.K.B., 379 Mass. 1, 4 (1979) (art. 10 of Massachusetts Declaration of Rights provides right to appointed counsel for indigent parents in proceedings seeking to terminate their parental rights).

A. Criminal right to counsel. Under the Sixth Amendment and art. 12, a criminal defendant must be afforded a right to counsel in proceedings that do or could directly lead to "actual imprisonment."[7] Scott v. Illinois, 440 U.S. 367, 373 (1979). See Alabama v. Shelton, 535 U.S. 654, 662-665 (2002) (counsel required where conviction would result in imposition of suspended sentence). Cf. G. L. c. 211D, § 2B ("A person charged with a misdemeanor or a violation of a municipal ordinance or bylaw . . . shall not be appointed counsel if the judge, at arraignment, informs such person on the record that, if the person is convicted of such offense, the person's sentence shall not include any period of incarceration"); Lavallee v. Justices in the Hampden Superior Court, 442 Mass. 228, 239-240 (2004) (judges may exercise discretion when deciding whether to announce at arraignment that misdemeanor defendant faces no incarceration and thus no counsel need be appointed). In the instant case, we read the defendant's invocation of the Sixth

[7] As the defendant faced the possibility of "actual imprisonment" under G. L. c. 209A, § 7, he properly was represented by counsel at all critical stages of his prosecution. He ultimately received a sentence of probation.

Amendment and art. 12 as an argument that these constitutional provisions required that he be afforded the right to counsel in the earlier abuse prevention order proceeding because that proceeding led to the issuing of the abuse prevention order, the violation of which led to the subsequent criminal charges and risk of imprisonment. We disagree.

First, the right to counsel applies only to criminal defendants, and the initial c. 209A proceedings are civil in nature. See G. L. c. 209A, § 3A. Second, even if the right to counsel were extended to civil defendants who might later face criminal charges related to a civil proceeding, we conclude that there is no violation to such right to counsel when a distinct, constitutionally permissible -- albeit uncounselled -- proceeding provides a predicate for an entirely different, constitutionally permissible criminal proceeding. Where both the predicate and subsequent proceedings are criminal in nature, "[t]he United States Supreme Court has squarely held that this [type of relationship between proceedings] is permissible under the Sixth Amendment." Commonwealth v. Faherty, 93 Mass. App. Ct. 129, 132 (2018), citing Nichols v. United States, 511 U.S. 738, 748-749 (1994) (prior operating while under influence [OUI] convictions, for which defendant went uncounselled and had no right to counsel because he faced no actual incarceration, could be used as predicates for subsequent OUI conviction as repeat

offender). See United States v. Bryant, 579 U.S. 140, 151-156 (2016) (prior uncounselled convictions of domestic abuse in tribal court, which were valid under Indian Civil Rights Act and did not violate Sixth Amendment, could be predicate offenses for felony domestic assault by habitual offender); Nichols, supra at 746-747(prior uncounselled misdemeanor conviction, for which defendant had no right to counsel, could be used to enhance sentence at subsequent conviction).

The defendant has not cited any reason to believe art. 12 would provide any enhanced protection for criminal defendants in this context.[8] See Faherty, 93 Mass. App. Ct. at 132 ("we see no reason why art. 12 of the Massachusetts Declaration of Rights would forbid the use of a constitutionally valid conviction in a subsequent case"); id. at 133, citing Commonwealth v. Martin, 425 Mass. 718, 720-721 (1997) ("Respect for the defendant's constitutional rights, not increments in reliability, must be the touchstone here" [citation omitted]). Cf. Commonwealth v. Delorey, 369 Mass. 323, 329-330 (1975) (conviction obtained

[8] Although not dispositive in a constitutional analysis, it is worth noting that Massachusetts law contemplates this type of relationship between criminal proceedings. See, e.g., G. L. c. 272, § 53 (b) (first offense of disorderly conduct punishable by fine only; second offense, for which first offense must be predicate, punishable by incarceration); G. L. c. 266, § 30A (first and second offenses of misdemeanor shoplifting punishable by fine only; third offense punishable by incarceration).

without counsel because defendant was found not indigent and declined to retain counsel could be admitted in subsequent proceeding).

We see no reason why this reasoning should not extend to contexts in which the initial, predicate proceeding is merely a civil one. Indeed, whether the predicate proceeding is civil or criminal in nature, the same logic applies. Each proceeding arises from wholly different alleged conduct, and so the latter proceeding "do[es] not change the penalty [or other consequence] imposed for the earlier" conduct. Nichols, 511 U.S. at 747. Compare Bryant, 579 U.S. at 141 (uncounselled tribal court convictions can serve as predicate offenses for felony conviction because felony conviction "punishes [defendant's] most recent acts . . . not his prior crimes prosecuted in tribal court"), with Shelton, 535 U.S. at 662 (counsel required where conviction would result in imposition of suspended sentence because "[o]nce the prison term is triggered, the defendant is incarcerated not for the probation violation but for the underlying offense").

Here, for example, an abuse prevention order was issued against the defendant due to conduct that occurred prior to the c. 209A civil proceeding (i.e., his abuse of the victim), while the defendant was later tried and convicted on the basis of conduct that occurred exclusively after the c. 209A civil

proceeding (i.e., his violation of the c. 209A order). Accordingly, the defendant's conviction and sentence were not for his prior abuse of the victim -- the issue before the court during the civil proceeding for which the defendant was uncounselled. Thus, while the defendant's constitutional right to counsel required that he be represented at trial for his violation of the abuse prevention order (because he faced actual incarceration under G. L. c. 209A, § 7), it did not require that he be represented at the proceedings that led to the abuse prevention order being issued originally.

B. Procedural due process. Next, the defendant contends that procedural due process requires the appointment of counsel for those indigent defendants in c. 209A hearings who will later be prosecuted for violating abuse prevention orders. We again disagree.

We conclude that there is no violation to defendants' constitutional right to due process where an underlying, constitutionally permissible -- albeit uncounselled -- proceeding later provides a predicate for a different, constitutionally permissible criminal proceeding. In Bryant, 579 U.S. at 156-157, for example, the Supreme Court held that there was no due process violation where the defendant's previous tribal court convictions were used to satisfy an element of the Federal offense of which he was convicted.

There, the defendant had been constitutionally convicted in tribal court without the assistance of counsel. See id. at 143. ("the Sixth Amendment does not apply to tribal-court proceedings"). Because the Indian Civil Rights Act provides for other procedural safeguards in tribal proceedings -- even absent the assistance of counsel -- the Supreme Court held that those tribal court proceedings "sufficiently ensure the reliability of tribal-court convictions[, and t]herefore[] the use of those convictions in a [subsequent] federal prosecution does not violate a defendant's right to due process." Id. at 157. Accordingly, we reason that so long as the c. 209A civil proceeding and subsequent criminal proceeding at issue here met the requirements of due process, then it did not violate due process that the violation of the c. 209A order formed the basis for the subsequent criminal proceeding.

We have already considered a challenge to the underlying c. 209A proceedings on constitutional due process grounds. In Frizado v. Frizado, 420 Mass. 592 (1995), overruled on another ground by Zullo, 423 Mass. at 681, we rejected such facial challenges to c. 209A, holding that "[t]he general pattern to be followed in G. L. c. 209A proceedings is both fair and reasonably clear. Whether a defendant's constitutional rights have been violated will depend upon the fairness of a particular proceeding." Frizado, supra at 598. See Lonergan-Gillen v.

Gillen, 57 Mass. App. Ct. 746, 750 (2003) ("The due process rights of a defendant in a G. L. c. 209A proceeding are amply protected"). See Nollet v. Justices of the Trial Court of the Commonwealth of Mass., 83 F. Supp. 2d 204, 214 (D. Mass.), aff'd, 248 F.3d 1127 (1st Cir. 2000) ("the ex parte proceeding of [c.] 209A, § 4, provides all the procedural protections necessary to satisfy the requirements of due process of law"). Moreover, as stated supra, the defendant does not argue that at the time his c. 209A proceeding occurred, the proceedings suffered from constitutional defects personal to him, nor does he ask us to reconsider generally the procedural safeguards provided for all civil defendants under G. L. c. 209A.[9] The

[9] Although the defendant expressly has declined to ask us to consider generally the procedural safeguards in c. 209A civil proceedings, he and amici CPCS, WBA, and NCCRC cite to a line of this court's decisions, most of which were subsequent to Frizado, 420 Mass. 592, in which this court has concluded that due process requires a right to counsel in some cases implicating parental rights. See, e.g., L.B. v. Chief Justice of the Probate & Family Court Dep't, 474 Mass. 231, 242-243 (2016) (indigent parent has right to court-appointed counsel in contested proceeding to modify terms of guardianship); Guardianship of V.V., 470 Mass. 590, 592-594 (2015) (indigent parent has right to court-appointed counsel in contested, private guardianship proceeding); Adoption of Meaghan, 461 Mass. 1006, 1007 (2012) (indigent parent has right to court-appointed counsel in contested adoption proceedings); J.K.B., 379 Mass. at 2-5 (indigent parent has right to court-appointed counsel in State-initiated, contested proceeding to terminate parental rights). But see G. L. c. 209C, § 7 (counsel may be appointed in contested private custody proceeding, but only when "the interests of justice require"). Accordingly, we take this opportunity to note that we need not and do not reach this issue

defendant also does not argue that any other aspect of the criminal proceedings to which he was subject separately violated due process.

Accordingly, we conclude that the defendant's right to due process was not violated when he was prosecuted criminally and convicted for violating an abuse prevention order that issued during a proceeding for which he was uncounselled and afforded no right to counsel.

c. Alleged trial errors. i. Standard of review. In addition to his constitutional challenges, the defendant asserts that the trial judge erred by (1) denying his motion for a mistrial after the victim spontaneously stated that the defendant previously had assaulted her and (2) disallowing questions regarding the victim's continued possession of the defendant's personal belongings. We review for an abuse of

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here. In the instant case, there is no evidence that the defendant shared children with the victim, and the defendant makes no argument that the proceedings at issue implicated his parental rights.

Likewise, the defendant and amicus CPCS note that defendants in abuse prevention order proceedings may face difficult decisions with regard to their Fifth Amendment right against self-incrimination when they are also being prosecuted for the underlying abusive conduct. The defendant in the instant case, however, was prosecuted for his subsequent violation of the abuse prevention order, not for the abuse that gave rise to the order. No testimony from the prior abuse prevention order proceeding was introduced at his trial. Accordingly, we again note that we need not and do not reach this issue here.

discretion. See Commonwealth v. Denton, 477 Mass. 248, 250 (2017) (evidentiary rulings reviewed for abuse of discretion); Commonwealth v. Martinez, 476 Mass. 186, 197 (2017) (denial of motion for mistrial reviewed for abuse of discretion).

ii. Denial of motion for mistrial. Prior to trial, the defendant successfully moved in limine to exclude any evidence of "bad character, prior misconduct, subsequent misconduct, or alcohol abuse." At trial, the Commonwealth asked the victim when her relationship with the defendant ended, to which the victim responded, "The night that he assaulted me the last time." The judge immediately struck the statement and instructed the jury to "disregard the witness's answer." The judge then denied the defendant's motion for a mistrial. The defendant asserts that the denial was an abuse of discretion because the victim's statement was highly prejudicial, particularly in light of her later testimony that she had suffered brain damage caused by "blows to [her] head." We disagree.

"Where a party seeks a mistrial in response to the jury's exposure to inadmissible evidence, the judge may correctly rely on curative instructions as an adequate means to correct any error and to remedy any prejudice to the defendant." Commonwealth v. Bryant, 482 Mass. 731, 740 (2019). "As long as the judge's instructions are prompt and the jury do not again

hear the inadmissible evidence," a mistrial may not be necessary. Commonwealth v. Garrey, 436 Mass. 422, 435 (2002).

Here, the statement "came as a surprise to both parties," without "any wrongful conduct by the prosecutor," Commonwealth v. Roby, 462 Mass. 398, 413 (2012), and was not repeated. See Commonwealth v. Cunneen, 389 Mass. 216, 223 (1983) (mistrial not required where improper remark "was apparently inadvertent, and was not repeated"). The judge gave a prompt and effective instruction immediately following the improper testimony, then reminded the jury in his final charge not to consider any struck testimony. See Commonwealth v. Bolling, 462 Mass. 440, 455 (2012). Because "[w]e presume that the jury follow the judge's instructions," including instructions to disregard testimony, there is no reason to believe that the defendant was unduly prejudiced. Commonwealth v. Cortez, 438 Mass. 123, 130 (2002).

We do not agree with the defendant's assertion that the victim's statement, when viewed in conjunction with her testimony about her brain damage, was so prejudicial as to overcome our presumption that jurors follow the judge's instructions. The victim's testimony about previous "assault[s]" and "blows to [her] head" was not relevant in determining the question before the jury, i.e., whether the defendant violated the existing c. 209A order. See Roby, 462 Mass. at 413 (no mistrial required where inadmissible testimony

"did not bear on the charged conduct"). In addition, prior to the statement, the jury already were aware that the victim had obtained an abuse prevention order against the defendant. Cf. Commonwealth v. Gallagher, 408 Mass. 510, 517 (1990) (no abuse of discretion by judge in denying motion for mistrial after jury inadvertently learned that physical examination of defendant occurred in jail, where jury already knew defendant had been taken into police custody). Thus, in the circumstances here, the judge's instructions cured any potential prejudice from the struck testimony, and there was no error in the denial of the defendant's motion for a mistrial.

iii. Limitation on cross-examination. During cross-examination, the defendant sought to question the victim about her retention of his belongings after he was forced to vacate the rooming house. The judge permitted some questioning on the subject, and the defendant was able to establish that (1) he left property behind after moving out of the rooming house, (2) at the time of trial, the victim was still in possession of that property, and (3) the victim had agreed to give the defendant an opportunity to collect his property. The judge subsequently prohibited questioning with respect to whether the victim (1) entered the defendant's former residence to retrieve the property, (2) currently had the defendant's belongings in her possession, or (3) had agreed to allow the defendant to

retrieve his property. The defendant asserts that these prohibited questions would have tended to prove that the victim fabricated the violation of the abuse prevention order so that she could retain the defendant's property while he was incarcerated. The defendant argues that, by prohibiting the proposed questions, the judge violated his right to present a defense under the Sixth Amendment and art. 12. We disagree.

The defendant is correct that "[c]ross-examination of a prosecution witness to show the witness's bias or prejudice is a matter of right under the Sixth Amendment . . . and art. 12" (citation omitted). Commonwealth v. Avalos, 454 Mass. 1, 6 (2009). Nonetheless, the right is not absolute, and we "have held that 'a judge does have discretion to limit cross-examination concerning possible bias when further questioning would be redundant'" (alteration omitted). Id. at 7, quoting Commonwealth v. Allison, 434 Mass. 670, 681 (2001). So long as the defendant's allegations are "sufficiently aired," the right to present a defense under the Sixth Amendment and art. 12 is satisfied. Avalos, supra, quoting Commonwealth v. LaVelle, 414 Mass. 146, 154 (1993).

Here, the victim had already provided testimony that went to what each of the prohibited questions sought to elicit. Before defense counsel asked the victim whether she retained possession of the defendant's belongings, the victim already had

testified that the defendant's belongings were "still there [in a closet]." Similarly, only moments before being asked whether she had "agreed to allow [the defendant] to come pick up [his] property," the victim testified without objection that she had "agreed to give [the defendant] an opportunity to pick up his property."[10] Finally, there was no abuse of discretion in the judge's decision to exclude the defendant's question as to whether the victim had entered his former residence to obtain his property: while the victim's continued possession of the defendant's property might bear on bias, providing a possible motive for fabricating the violation, the way she obtained the property does not.

Judgment affirmed.

[10] The abuse prevention order itself, which was admitted in evidence, provided that the defendant "may pick up [his] personal belongings in the company of police at a time agreed to by the [victim]."